STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of WILLIAMSON/WILSON, Minors.	UNPUBLISHED May 20, 2014 No. 318844 Cass Circuit Court Family Division LC Nos. 12-000141-NA; 12-000142-NA; 12-000143-NA; 12-000144-NA
In the Matter of WILSON, Minors.	No. 318846 Cass Circuit Court Family Division LC Nos. 12-000142-NA; 12-000143-NA; 12-000144-NA

Before: MURPHY, C.J., and O'CONNELL and K. F. KELLY, JJ.

PER CURIAM.

In Docket No. 318844, respondent-mother appeals as of right the orders terminating her parental rights to her four minor children. Respondent-mother's parental rights were terminated under MCL 712A.19b(3)(c)(*i*) (conditions of adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood child will be harmed if returned to parent). In Docket No. 318846, respondent-father, who is the father of three of respondent-mother's four children, appeals as of right the order terminating his parental rights to those three minor children. Respondent-father's parental rights were terminated under MCL 712A.19b(3)(c)(*i*), (g), and (l) (parental rights to another child previously terminated under the juvenile code).[1] We affirm the termination of both respondents' parental rights.

[1] Contrary to his argument on appeal, the record establishes that the trial court did not terminate respondent-father's parental rights pursuant to MCL 712A.19b(3)(i).

In Docket No. 318846, respondent-father argues that the trial court clearly erred by terminating his parental rights to his children. Although not expressly argued by respondent-mother in Docket No. 318844, we shall also review whether the record supported termination of her parental rights.

If a trial court finds that a single statutory ground for termination has been established by clear and convincing evidence and that it has been proven by a preponderance of the evidence that termination of parental rights is in the best interests of a child, the court is mandated to terminate a respondent's parental rights to that child. MCL 712A.19b(3) and (5); *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). "This Court reviews for clear error the trial court's ruling that a statutory ground for termination has been established and its ruling that termination is in the children's best interests." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011); see also MCR 3.977(K). "A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). In applying the clear error standard in parental termination cases, "regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

We find that the trial court properly terminated respondents' respective parental rights pursuant to MCL 712A.19b(3)(g). Termination is proper under MCL 712A.19b(3)(g) when "[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." This Court has previously found that termination pursuant to MCL 712A.19b(3)(g) was proper where, in part, "there [was] no real evidence that" the respondent benefited from the services offered. *In re CR*, 250 Mich App 185, 196; 646 NW2d 506 (2002). Additionally, termination is proper under MCL 712A.19b(3)(g) when a parent cannot provide the "most rudimentary care the children needed." *Id*.

Here, the minor children were removed from respondents' care because they could not provide proper care, and the record supports that respondents remained unwilling or unable to do so throughout the 15-month proceeding. Respondents failed to improve their parenting skills despite being provided with extensive parenting training between May 2012 and December 2012. Further, although respondents were provided with additional parenting training from the end of March 2013 until June 2013, the record establishes that respondent-father inconsistently applied the parenting skills that he had been taught, and respondent-mother failed to show progress. Respondents both failed to consistently discipline the children. Because the children were behaving poorly during parenting time and were exhibiting stress, respondents' parenting time was suspended in July 2013. Respondents had not seen the children for over two months at the time of termination.

The record also supports that respondents were unable to provide proper care and custody at the time of termination because they failed to fully acknowledge and address their extensive history of domestic violence. During the proceedings, the children reported witnessing significant violence between respondents while they were in their care. Indeed, the precipitating incident leading to the child protective proceedings involved respondent-father choking respondent-mother and her resort to grabbing a butcher knife in response. Respondent-mother

"identified having experienced financial, emotional, verbal, and physical abuse" in her relationship with respondent-father. However, even after 10 months of therapy, respondent-mother minimized the physical abuse that had occurred in her relationship with respondent-father, and she continued to minimize the effect that witnessing the violence had on the children. Respondent-father failed to complete a domestic violence class during the proceedings, and it was believed that he had not acknowledged the effect the violence had on the children. Further, although respondent-father had completed outpatient substance abuse treatment to address his extensive history with abusing marijuana, he failed to attend the recommended relapse prevention program and never submitted evidence that he had attended Narcotics Anonymous. At the time of termination, respondent-father had not participated in treatment for seven months and there was concern that he would not maintain long-term sobriety as a result of his failure to complete treatment. See *In re CR*, 250 Mich App at 195-196 (insufficient evidence that parent "would remain clean and sober in the future"). The record also establishes that respondents could not provide the "most rudimentary care" the minor children required because, at the time of termination, their home was not "adequate." Respondent-father was unemployed and was almost $9,000 behind in child support. Respondent-mother was almost $500 behind in child support. The record clearly supports that respondents could not provide proper care and custody at the time of termination.

Further, the record clearly establishes that there was "no reasonable expectation that the parent[s] [would] be able to provide proper care and custody within a reasonable time considering" the ages of the minor children. MCL 712A.19b(3)(g). Respondents demonstrated a lack of commitment and progress during the proceedings. As a result, they had not seen the children for over two months at the time of termination. The record supports that, even if respondents benefited from additional services to address their poor parenting skills, it would be quite some time before the children could be returned to their care. At the time of termination, the children ranged in ages from 2 to 7 years old, and they had been in care for 15 months and required permanency. The trial court's finding that termination of respondents' respective parental rights was proper pursuant to MCL 712A.19b(3)(g) does not leave us with a definite and firm conviction that a mistake had been made. Moreover, the evidence was also sufficient to support termination under MCL 712A.19b(3)(c)(*i*) and (j). Additionally, given the record, the trial court did not clearly err in finding that termination was in the best interests of the children.

In Docket No. 318844, respondent-mother argues that her right to procedural due process was violated because she was deprived of the "right to a fair and impartial decision maker" at the termination hearing. Respondent-mother argues that the trial court demonstrated bias against her by its questioning of several witnesses, including respondent-mother herself, at the termination hearing. Because this due process argument is unpreserved, respondent-mother must demonstrate plain error affecting her substantial rights. *In re HRC*, 286 Mich App at 450.[2] The

[2] It is also arguable that respondent-mother waived the issue. The termination hearing was conducted over three days within a two-week period, and respondent-mother now complains of bias that was allegedly reflected on the very first day of the hearing. However, she never sought to disqualify the trial court on the basis of bias pursuant to the procedures in MCR 2.003. See

trial court had the authority to question witnesses, MCR 3.923(A), and, upon our review of the record, we find that the court's examination of the various witnesses, including respondent-mother, was proper, where the court was either attempting to clarify testimony or to elicit additional relevant information. *In re Forfeiture of $1,159,420*, 194 Mich App 134, 153; 486 NW2d 326 (1992) (noting also the expanded discretion of a judge to question witnesses during a bench trial as opposed to a jury trial). Furthermore, respondent-mother cannot establish that her substantial rights were affected, given the strong evidence supporting termination of her parental rights. Accordingly, because respondent-mother cannot establish that any alleged bias changed the outcome of the termination hearing, she is not entitled to relief.

Affirmed.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ Kirsten Frank Kelly

Davis v Chatman, 292 Mich App 603, 615; 808 NW2d 555 (2011) (failure to follow procedure in MCR 2.003 as to disqualification constitutes a waiver).